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/XuFan Tseng/

April 29, 2011

XuFan Tseng

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/678,558  
Appellants : Thumplasseril V. John *et al.*  
Filed : October 3, 2003  
Title : Conjugated Dienamides, Methods of Production Thereof,  
Compositions Containing Same and Uses Thereof  
Art Unit : 1655  
Examiner : Catheryne Chen  
Confirmation No. : 2540  
Attorney Docket No. : IFF-63

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF UNDER 37 CFR § 41.37**

Dear Sir/Madam:

This Appeal Brief is submitted in support of the appeal from the Primary Examiner's November 9, 2010 final rejection of claims 3, 4, 40, and 41 in the above-identified application. Appellants submit this Appeal Brief in furtherance of the Notice of Appeal filed March 8, 2011 under CFR § 41.31. The Commissioner is authorized to charge any required fees and any additional fees, or credit any overpayment to the Deposit Account No. 12-1295 in connection with this matter.

**(I) REAL PARTY IN INTEREST**

The real party in interest is International Flavors & Fragrances Inc., the assignee of the above-identified application.

**(II) RELATED APPEALS AND INTERFERENCES**

Appellants believe there are no related appeals or interferences that will directly affect or will be directly affected by the Board's decision in the present appeal.

**(III) STATUS OF CLAIMS**

The application as filed contained claims 1-50.

In the September 18, 2007 Amendment, claims 5-37 and 42-50 were canceled.

In the July 2, 2008 Amendment, claims 1, 2, 38, and 39 were further canceled.

All of the pending claims (i.e., claims 3, 4, 40, and 41) have been rejected and are the subject of this appeal.

**(IV) STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the November 9, 2010 Final Office Action.

**(V) SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention is directed to a mixture consisting essentially of N-isobutyl-E2, E4-decadienamide, N-isobutyl-E2, E4-undecadienamide, N-pyrrolidyl-E2, E4-decadienamide, and N-piperidyl-E2, E4-decadienamide.

Independent claim 3 recites a mixture consisting essentially of N-isobutyl-E2, E4-decadienamide, N-isobutyl-E2, E4-undecadienamide, N-pyrrolidyl-E2, E4-decadienamide, and N-piperidyl-E2, E4-decadienamide;<sup>1</sup>

Dependent claim 4 depends from claim 3, and contains further limitations to claim 3;<sup>2</sup>

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<sup>1</sup> Specification at page 5, lines 6-18

<sup>2</sup> Specification at page 5, lines 4-6

Dependent claim 40 depends from claim 3, and contains further limitations to claim 3;<sup>3</sup> Dependent claim 41 depends from claim 40, and contains further limitations to claim 40.<sup>4</sup>

#### **(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 3, 4, 40, and 41 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention.

#### **(VII) ARGUMENT**

Claims 3, 4, 40, and 41 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention. Specifically, Examiner alleges that claim 3 recites the phrase “consisting essentially of” and claim 4, 40, and 41 recite the term “comprising”, and, thus, the claims contain mixed terms and are not clear (*See*, Office Action, pages 2-3).

First, independent claim 3 recites a mixture of N-isobutyl-E2, E4-decadienamide, N-isobutyl-E2, E4-undecadienamide, N-pyrrolidyl-E2, E4-decadienamide, and N-piperidyl-E2, E4-decadienamide.<sup>5</sup> The recitation “consisting essentially of” in claim 3 limits the claimed mixture to the specified amides and those that do not materially affect the basic and novel characteristic(s) of the mixture (*See*, MPEP § 2111.03).

Further, Examiner acknowledges that claim 3 is free of the arts (*See*, Office Action, page 3, line 8).

As such, Appellants respectfully submit that claim 3 is definite and particularly points out and distinctly claims the subject matter which Appellants regard as the invention.

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<sup>3</sup> Specification at page 11, lines 7-19

<sup>4</sup> Specification at page 11, lines 7-19

<sup>5</sup> Specification at page 5, lines 6-18

Secondly, claim 4 depends from claim 3 and recites a composition comprising from about 3% to about 100% by weight of the mixture of claim 3.

The mixture of claim 3 is useful at the recited concentrations of claim 4 in various compositions such as perfume compositions, flavor compositions, oral care products, skin care products, and hair care products. Support can be found throughout the specification as filed (*See*, for example, page 5, lines 4-6; page 3, lines 17-21; page 12, lines 2-20; and page 13, line 15 to page 15, line 31). Specifically, the use of the claimed mixture has been demonstrated in a fragrance-containing shampoo base as well as an orange-punch-flavored tablet (*See*, Examples IIA, IIB, and IIC, pages 23-25; Examples IIIA, IIIB, and IIIC, pages 25-27).

Appellants further submit that it would be apparent to one skilled in the art the various compositions such as perfume compositions, flavor compositions, oral care products, skin care products, and hair care products would contain additional active ingredients to meet their different intended uses and requirements. Accordingly, claim 4 drawn to various compositions recites “comprising”, which refers to the ingredients of these various compositions and indicates the possible inclusion of other active components in these various compositions. It is thus respectfully submitted that claim 4 is definite and particularly points out and distinctly claims the subject matter which Appellants regard as the invention.

Thirdly, claim 40 depends from claim 3 and recites a sensate-containing composition in further mixture with the mixture of claim 3. The term “comprising” specifically refers to the ingredients of the sensate-containing composition, which may contain other active ingredients in addition to a sensate. Accordingly, it is believed claim 40 is also definite and particularly points out and distinctly claims the subject matter which Appellants regard as the invention.

Lastly, claim 41 depends from claim 40 and further defines the sensate as the tingling sensate of a spilanthol. The term “comprising” consistently and specifically refers to the ingredients of the sensate-containing composition, which may contain other active ingredients in addition to the specified tingling sensate. Accordingly, it is believed claim 41 is also definite and particularly points out and distinctly claims the subject matter which Appellants regard as the invention.

In view of the foregoing, the claim language is believed to be clear and precise. The uses of the terms “consisting essentially of” and “comprising” are distinct, specific, and definite.

Appellants respectfully submit that currently pending claims (i.e., claims 3, 4, 40, and 41), in accordance with 35 U.S.C. § 112, second paragraph, are definite for particularly point out and distinctly claim the subject matter which Appellants regard as the invention.

#### Conclusion

For the reasons set forth above, Appellants respectfully submit that claims 3, 4, 40, and 41 are patentable. Appellants respectfully request the Board of Patent Appeals and Interferences to reverse all of the Examiner’s rejections as to all of the claims.

Respectfully submitted,

/XuFan Tseng/

Date: April 29, 2011

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**(VIII) CLAIMS APPENDIX**

1-2. (Canceled)

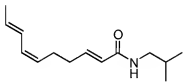
3. (Previously presented)     A mixture consisting essentially of:  
N-isobutyl-E2, E4-decadienamide,  
N-isobutyl-E2, E4-undecadienamide,  
N-pyrrolidyl-E2, E4-decadienamide, and  
N-piperidyl-E2, E4-decadienamide.

4. (Previously presented)     A composition comprising from about 3% to about 100%  
by weight of the mixture of claim 3.

5-39. (Canceled)

40. (Previously presented)     The mixture of claim 3 in admixture with a composition  
comprising a sensate selected from the group consisting of a cooling sensate, a warming  
sensate, and a tingling sensate.

41. (Previously presented)     The mixture of claim 40, wherein the composition  
comprises the tingling sensate of a spilanthal having the structure:



42-50. (Canceled)

**(IX) EVIDENCE APPENDIX**

None

**(X) RELATED PROCEEDINGS APPENDIX**

None